

ASSIGNMENT 5

Textbook Assignment: "Military Law of Evidence (continued)," and "Courts-Martial Procedures," chapters 4 and 5, pages 4-8 through 5-15.

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| <p>5-1. Hearsay is generally not admitted in evidence.</p> <ol style="list-style-type: none">1. True2. False <p>5-2. Dying declarations of an alleged victim are excepted from what rule?</p> <ol style="list-style-type: none">1. Documentary2. Res gestae3. Prima facie4. Hearsay <p>5-3. In most cases, if a dying declaration is to be introduced at a trial for criminal homicide, in what condition must the person be at the time of trial?</p> <ol style="list-style-type: none">1. Dead2. Critical3. In extremity4. Impending death <p>5-4. Which of the following is an example of an exception to hearsay testimony?</p> <ol style="list-style-type: none">1. Affidavit2. Res gestae3. Prima facie4. Documentary <p>5-5. Which of the following definitions best describes res gestae?</p> <ol style="list-style-type: none">1. Any evidence that is admissible as hearsay2. A statement made under conditions where the victim was in extremity3. Voluntary exclamations or acts made at the time the offense was committed4. Involuntary exclamations or acts made at the time the offense was committed | <p>5-6. During trial, evidence is first introduced by whom?</p> <ol style="list-style-type: none">1. The prosecution2. The defense counsel3. The court bailiff4. The senior court member <p>5-7. When, if ever, may one witness be present in court while another witness testifies?</p> <ol style="list-style-type: none">1. When the judge orders the witness to hear the testimony2. When the trial counsel and defense counsel agree to the presence of the witness3. When the second witness has finished his or her testimony4. Never <p>5-8. Objection to a witness on grounds of incompetence is made at what time?</p> <ol style="list-style-type: none">1. Before the court convenes only2. Before the court reaches a verdict only3. Before the witness is sworn only4. At any time <p>5-9. A court-martial convened by the Navy can require the appearance of witnesses from which of the following services?</p> <ol style="list-style-type: none">1. Navy only2. Navy and Marine Corps only3. Navy, Marine Corps, and Coast Guard only4. All Armed Forces |
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- 5-10. When a witness is stationed near the location where the court convenes, by whom is the witness notified?
1. CO of the witness
 2. Trial counsel
 3. Military judge
 4. Defense counsel
- 5-11. When practicable, a request for the attendance of a military witness is made to allow a minimum notice of how many hours before court convenes?
1. 12
 2. 24
 3. 48
 4. 72
- 5-12. A subpoena is normally issued for a civilian witness a minimum of how many hours before the time the witness must travel from home to comply with the subpoena?
1. 12
 2. 24
 3. 48
 4. 72
- 5-13. When, if ever, may an accused be forced to testify?
1. When ordered by his or her CO
 2. When compelled by a military judge
 3. When the defense counsel calls him or her to the witness stand
 4. Never
- 5-14. When is an accomplice competent to testify?
1. At all times
 2. In a capital offense only
 3. When asked by the judge only
 4. When a credible witness only
- 5-15. When, if ever, may a trial counsel be required to testify?
1. After the verdict
 2. Before the court proceedings
 3. When his or her testimony is desired
 4. Never
- 5-16. A child must be 16 years old in order for his or her testimony to be admissible.
1. True
 2. False
- 5-17. When, if ever, may a husband testify to confidential communications received from his wife?
1. When the wife has given consent
 2. When ordered by the judge
 3. Under any circumstances
 4. Never
- 5-18. In cross-examination, what type of evidence may NOT be introduced to attack the credibility of the witness?
1. Proving that the witness was convicted of a crime involving moral depravity
 2. Testimony as to the character of the witness
 3. Proving that the witness was previously convicted of perjury
 4. Testimony that the witness has a bad reputation for truthfulness
- 5-19. Who decides whether or not a witness is competent to testify?
1. The trial counsel only
 2. The defense counsel only
 3. The judge only
 4. The trial counsel, the defense counsel, or the judge

- 5-20. The testimony of a witness may be impeached if it is proved that the witness made contradictory statements during the present trial.
1. True
 2. False
- 5-21. Which of the following is a definition of a deposition?
1. A written declaration under oath or affirmation made by a witness in the presence of the adverse party
 2. An oral declaration under oath made by a witness in the presence of the adverse party
 3. A written declaration made by the accused and witnessed by two other persons
 4. An oral declaration made by an accused and witnessed by two other persons
- 5-22. A deposition may be taken by which of the following persons?
1. A legal officer
 2. A court officer
 3. A notary public
 4. Each of the above
- 5-23. Depositions are NOT in violation of the hearsay rule for what reason(s)?
1. Because the witness is placed under oath only
 2. Because there is an opportunity for cross-examination only
 3. Because the witness is under oath and there is an opportunity for cross-examination
 4. Because the accused is present while the deposition is taken
- 5-24. An affidavit differs from a deposition in what way?
1. An affidavit is made without giving the other side an opportunity to ask questions of the declarer
 2. An affidavit is unsworn
 3. An affidavit is hearsay
 4. An affidavit is always admissible
- 5-25. During the examination of a witness, the fourth examination of the witness is known by what term?
1. Redirect examination
 2. Re-cross-examination
 3. Cross-examination
 4. Cross-direct-examination
- 5-26. Leading questions are allowed in court proceedings at which of the following times?
1. When asked by the defense counsel
 2. When asked by the trial counsel
 3. When the witness appears hostile to the party who called him or her
 4. When a double question is asked
- 5-27. Are double questions allowed in court? If so, under what circumstances?
1. Yes; when asked by the trial counsel
 2. Yes; to shorten court proceedings
 3. Yes; when confronted by a hostile witness
 4. No
- 5-28. During a trial, which of the following types of questions is NOT forbidden?
1. Classified military question
 2. Incriminating question
 3. Degrading question dealing with a material issue of a trial
 4. Degrading question dealing with a minor issue of a trial

- 5-29. A witness may NOT give his or her opinion regarding which of the following characteristics of a person?
1. Sanity
 2. Sobriety
 3. Identity
 4. Guilt
- 5-30. Are witnesses allowed to discuss their testimony with any of the following persons? If so, with whom?
1. Yes; the accused
 2. Yes; other witnesses
 3. Yes; any court official
 4. No
- 5-31. Of the following types of offenses, which one should be tried at a summary court-martial?
1. Major
 2. Minor
 3. Capital
 4. Serious
- 5-32. A summary court-martial has no civilian equivalent.
1. True
 2. False
- 5-33. The power to convene a summary court-martial rests with what authority?
1. JAG office
 2. Executive officer
 3. Commanding officer
 4. Authorized command
- 5-34. An individual tried by a state court may only be retried by a summary court-martial with the permission of what authority?
1. Commanding officer
 2. Secretary of the Navy
 3. Chief of Naval Operations
 4. Officer exercising general court-martial jurisdiction
- 5-35. Before any case may be brought before a summary court-martial, the court must be properly
1. charged
 2. convened
 3. regulated
 4. documented
- 5-36. A summary court-martial is created in what manner?
1. By order of the convening authority detailing the summary court-martial officer
 2. By annotation on the report chit referring it to court-martial
 3. By order of the commanding officer
 4. By order of the executive officer
- 5-37. A summary court-martial requires how many officers?
1. One
 2. Two
 3. Three
 4. Four
- 5-38. The summary court-martial officer must be at least what grade?
1. 01
 2. 02
 3. 03
 4. 04
- 5-39. When the convening authority is the only commissioned officer in a unit and he wishes to convene a summary court-martial, which of the following actions is recommended?
1. Take the accused to mast
 2. Refer the case to the next higher authority
 3. Forward the case to another command
 4. Appoint an officer from another command

- 5-40. Which of the following personnel may be tried by a summary court-martial?
1. A commissioned officer
 2. A warrant officer
 3. A petty officer
 4. A midshipman
- 5-41. If the number of charges exceed the amount of room provided on a charge sheet, what action should be taken?
1. Continue the charges on a second charge sheet
 2. Place them on a separate sheet of paper as enclosure (1)
 3. Place them on a separate sheet of paper as attachment A
 4. Place them in part II of the charge sheet
- 5-42. The signature of the accuser should appear in what block of the charge sheet?
1. I
 2. II
 3. III
 4. IV
- 5-43. For what reason is an accused informed of the charges?
1. To provide a reasonable notice of impending prosecution
 2. To provide a forum notice of the charges
 3. To start the speedy trial requirement
 4. To start the statute of limitations
- 5-44. Once the referral of a summary court-martial case has been properly executed, what action should be taken next?
1. Prepare the convening order
 2. Inform the accused of the charges
 3. Conduct a preliminary inquiry
 4. Forward the case file to the summary court-martial officer
- 5-45. After referral, are changes allowed on the charge sheet to correct minor errors? If so, In what manner?
1. Yes; but the charges must be resworn
 2. Yes; but the changes must be initialed by the accused
 3. Yes; but the changes must be initialed by the summary court-martial officer
 4. No
- 5-46. Of the following documents, which one contains information on a pretrial conference for a summary court-martial?
1. JAGMAN
 2. Charge sheet
 3. MCM, Appendix VI
 4. MCM, Appendix IX
- 5-47. May reduction in rate be awarded at a summary court-martial for E-5 and above? If so, to what maximum number of inferior paygrades?
1. Yes; one
 2. Yes; two
 3. Yes; three
 4. No
- 5-48. At a summary court-martial, the accused has a statutory right to civilian counsel at military expense.
1. True
 2. False
- 5-49. In which, if any, of the following documents may the trial guide for a summary court-martial be found?
1. MCM Appendix IX
 2. JAG Manual, Chapter 5
 3. Navy Legal Manual, Chapter 2
 4. None of the above

- 5-50. Who is responsible for making sure only legal and competent evidence is presented at a summary court-martial?
1. The accused's defense counsel
 2. The court-martial officer
 3. The convening authority
 4. The accused
- 5-51. If a summary court-martial officer has a question regarding the admissibility of evidence, from what source should assistance be obtained?
1. Area coordinator
 2. Any judge advocate
 3. Convening authority
 4. Navy legal service office
- 5-52. What are the major steps of a summary court-martial?
1. Charges, pleas, presentation of the evidence, findings, and sentence
 2. Arraignment, motions, pleas, presentation of the evidence, findings, and sentence
 3. Motions, pleas, findings, and sentence
- 5-53. At a summary court-martial, an accused may change any plea at any time before which of the following events?
1. Sentencing
 2. Arraignment
 3. Findings are announced
 4. Presentation of evidence
- 5-54. When evidence is presented at a summary court-martial, the witnesses for the accused are called first.
1. True
 2. False
- 5-55. A special court-martial must have a minimum of how many members?
1. One
 2. Two
 3. Three
 4. Four
- 5-56. A special court-martial consisting of three members, counsel, but no military judge may NOT award which of the following punishments?
1. Bad conduct discharge
 2. Confinement for 6 months
 3. Reduction in rate to E-1
 4. Forfeiture of two-third's pay per month for 6 months
- 5-57. In a special court-martial with military judge and members, what person is responsible for presiding during deliberations?
1. Military judge
 2. Senior member
 3. Trial counsel
 4. Elected member
- 5-58. What are the elements needed for a court-martial to properly try a case?
1. Jurisdiction over the offense, defendant, and proper convening authority
 2. Jurisdiction over the offense and defendant only
 3. Defendant and proper convening authority only
- 5-59. Which of the following groups of members may properly sit on a special court-martial of an accused Navy Lieutenant?
1. CDR, LT, and ENS
 2. LT, LTJG and CW02
 3. LCDR, LTJG, and ENS
 4. CDR, MAJ (USMC), and LCDR

- 5-60. When an enlisted accused requests enlisted members sit on a special court-martial, what fraction of the court must consist of enlisted members?
1. One-fourth
 2. One-third
 3. One-half
 4. Two-thirds
- 5-61. When enlisted members are requested, but cannot be assigned due to extraordinary circumstances, what action must be taken?
1. The reasons must be annotated in the special instructions block of the charge sheet
 2. The reasons must be explained in the convening order
 3. The convening authority must forward a detailed explanation to the trial counsel
 4. An explanation must be prepared for inclusion in the issuing order
- 5-62. The military judge of a special court-martial should have which of the following qualifications?
1. Commissioned officer
 2. A member of the bar of a Federal court
 3. Certified by the Judge Advocate General
 4. All of the above
- 5-63. When charges are officially withdrawn on the charge sheet, who must initial and date the changes?
1. The defendant
 2. The trial counsel
 3. The convening authority
 4. The prosecuting attorney
- 5-64. In what way should a convening authority withdraw a case from one court and refer it to a new court?
1. By preparing a new page 1 to the charge sheet
 2. By preparing a new page 2 to the charge sheet
 3. By executing a new block 10 referral on the charge sheet
 4. By executing a new block 14 referral to the charge sheet
- 5-65. While awaiting trial, an accused commits new offenses. How should these additional charges be referred?
1. By making pen and ink changes to the original charge sheet
 2. By completing a new charge sheet
 3. By completing a new page 1 of the charge sheet
 4. By attaching a continuation page to the original charge sheet
- 5-66. At a special court-martial in times of peace, an accused be brought to trial a minimum of many days after formal charges have been served?
1. 1
 2. 2
 3. 3
 4. 4
- 5-67. What means of communication should the trial counsel use to notify the accused?
1. By letter
 2. In person
 3. The charge sheet
 4. By written orders
- 5-68. Of the following types of pleas, which one is the strongest form of proof known to the law?
1. Guilty
 2. Not guilty
 3. Conditional
 4. Nolo contendere

- 5-69. A special court-martial is composed of five members. How many members must agree on a finding of guilty?
1. Five
 2. Two
 3. Three
 4. Four
- 5-70. In a court-martial, for what reason are matters in mitigation of an offense introduced?
1. To lessen the punishment adjudged by the court
 2. To explain the circumstances surrounding the offense
 3. To aid the court in determining an appropriate sentence
 4. To form a legal justification for the offense
- 5-71. In a member's trial, who is responsible for announcing the sentence?
1. Bailiff
 2. Trial counsel
 3. Military judge
 4. President of the court
- 5-72. Which of the following types of courts-martial provides the greatest penalties provided by military law?
1. summary
 2. Special
 3. General
- 5-73. Of the following types of investigation, which one must be conducted before a general court-martial may lawfully occur?
1. Formal
 2. General
 3. Pretrial
 4. Preliminary
- 5-74. What is the purpose of an Article 32 pretrial investigation?
1. To formally inquire into the allegations contained in the charge sheet
 2. To prepare the government's case against the accused
 3. To ensure the allegations made in the charge sheet are factual
 4. To ensure the viability of the evidence presented in the case
- 5-75. What action initiates an Article 32 pretrial investigation?
1. Written request from the trial counsel
 2. Written orders of the convening authority
 3. Written request from the president of the court
 4. The completion of DD Form 457